

P-430/AR-95-1049

ORDER FINDING INITIAL AFOR FILING ADEQUATE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by United
Telephone Company of Minnesota Requesting
Adoption of An Alternative Regulation Plan

ISSUE DATE: December 19, 1995

DOCKET NO. P-430/AR-95-1049

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ADEQUATE

PROCEDURAL HISTORY

On May 25, 1995, the legislature enacted and the Governor signed into law Minn. Stat. §§ 237.76 through 237.772 (1995), hereinafter referred to in this docket as the Competition Statute. The new statute gives the Commission the authority to approve alternative forms of regulation (AFORs) for local exchange carriers (LECs) with more than 50,000 access lines.¹ As a result of this statute, four LECs in Minnesota are eligible for filing AFORs: Frontier Communications of Minnesota, Inc. (Frontier), GTE - Minnesota (GTE), U S West Communications, Inc. (USWC), and United Telephone Company (United).

On October 10, 1995, United filed an AFOR plan pursuant to the above referenced statute.

On October 31, 1995, the Commission issued its NOTICE OF FILING, ORDER ESTABLISHING PROCEDURES, AND ORDER CONVENING SETTLEMENT CONFERENCE (Order) in this matter. The Order provided interested persons with 20 days to challenge the adequacy or completeness of the filing.

On November 20, 1995, AT&T filed a challenge to the completeness or adequacy of the filing.

On November 29 and 30, 1995, replies to AT&T comments were filed by the Minnesota Department of Public Service (the Department), the Residential Utilities and Small Business Division of the Office of the Office of the Attorney General (RUD-OAG), United, and MCI.

On December 1, 1995, MCI Communications, Inc. (MCI) filed its comments regarding the adequacy of United's filing.

On December 11, 1995, the Commission met to consider this matter.

¹ A separate section of the statute applies to LECs with fewer than 50,000 access lines.

FINDINGS AND CONCLUSIONS

A. Adequacy of United's Filing

The primary issue before the Commission in this matter at this time is whether United has made an adequate filing as intended by the newly enacted Competition Statute (Minn. Stat. § 237.76 et seq.) and the Commission's October 31, 1995 Order.

1. AT&T's Challenge

In its comments, AT&T asserted that the United AFOR filing is deficient in two major areas with regard to the filing requirements of Minn. Stat. § 237.76 and the Commission's October 31 Order. AT&T indicated that United's plan fails to address how it will facilitate the development of alternatives for customers, and that the plan contains no commitment to implement conditions necessary for local service competition. Additionally, AT&T listed a number of specific areas where it believed the statute required information that had not been provided by the plan.

AT&T did not seek a rejection of the filing, but recommended that the Commission suspend the plan and extend the period for review, during which time 1) United would prepare and submit the additional information required, and 2) questions and interpretative issues regarding the Plan could be addressed by interested persons and decided by the Commission.

2. United's Response

United stated that the standard to be used in determining the appropriateness of a challenge to the completeness or formal adequacy of the Company's AFOR Plan is similar to the standard established in Commission rules addressing incentive plans Minn. Rules, Part 7829.2200. The Company noted that the cited rule provides that the Commission should reject only those plans that are substantially out of compliance with the requirements of applicable statutes or rules.

United argued that its Plan as filed is clearly in substantial compliance with the statutory requirements and should not be rejected. United further argued that issues raised by AT&T as matters that must be addressed before the Commission can determine the adequacy of the filing do not represent deficiencies in the AFOR Plan filing, but are instead an attempt by AT&T to delay the progress of the proceeding and the implementation of the Plan, and to begin setting forth arguments on the merits of the Plan.

3. The Department's Comments

The Department indicated that it believed that United has at least minimally addressed all the areas required by statute. While it noted that the Company may not have addressed each area sufficiently to warrant the approval of its AFOR Plan at this point, the Department argued that the regulatory process permits the Company to produce additional information and to augment its Plan before a final Commission decision on its application. The Department also noted that if United chooses not to submit the necessary additional information, or if the information submitted is not satisfactory to the Commission, the Commission may reject the United Plan.

The Department believed that AT&T has raised some valid issues that should be addressed in the substantive review of the Plan, and agreed with AT&T that more information is needed before a decision can be made whether or not to recommend approval of United's Plan. However, the Department did not conclude that the filing is inadequate or that the process should be suspended pending the receipt of the information necessary to address those issues. The Department argued that if United responds promptly to information requests, and interested persons will have appropriate time to analyze the information and make a decision whether or not to recommend approval.

The Department suggested that if it becomes evident, as the comment deadline approaches, that there is not adequate time to obtain and analyze the data, interested persons should then request additional time. It argued that it would be premature to extend the period of review at this time because United has sufficient time to revise the Plan and provide additional information to allow commenters to make their recommendations.

The Department recommended that the Commission accept United's filing as procedurally adequate.

4. The RUD-OAG's Comments

The Office of the Attorney General (OAG) believed that, while AT&T had raised some valid issues that need to be considered in the approval of the Plan, it had not shown that United's AFOR Plan is incomplete or deficient as to form. The OAG noted that AT&T had pointed to three main deficiencies, but argued that all three related to the merits of the case and not to the adequacy of the filing.

The OAG argued that suspension of United's Plan is unwarranted and will cause unnecessary delay, and that the additional information needed can be obtained through the discovery process. It stated that the Company had addressed all the areas identified in the statute and recommended that United's filing be accepted as complete.

5. MCI's Comments

MCI agreed with the objections to the adequacy of the filing raised by AT&T. Specifically, MCI indicated that

- total service long run incremental cost (TSLRIC) cost data are necessary to determine whether existing and proposed rates for local and access services are fairly priced in relation to their cost; and
- United's AFOR Plan contains no commitment to implement the necessary conditions for local service competition.

MCI believed that United's Plan should not be dismissed on these grounds; instead, it stated that United should have the opportunity to modify its plan to address the concerns raised in the AT&T comments.

6. Commission Analysis and Action

The standard for reviewing the adequacy of United's AFOR filing is "substantial compliance" with applicable statutes and rules, as stated by the Company. As the Commission stated in its October 31, 1995 Order in this matter,

If the Company's filing is not rejected within 50 days of the date of this Order, it will be deemed in substantial compliance with applicable filing requirements.
Order at page 4.

The Commission finds that United has to some degree addressed all areas required by the Competition Statute. On that basis, the Commission determines that United's filing is in compliance with statutory and Commission filing requirements.

However, the commenters are correct in noting that a number of the issues raised by AT&T will need to be further addressed in the substantive review of United's Plan, and will likely require the filing of additional information before a decision can be made on approval of the Plan. This information may include certain TSLRIC data, necessary to determine whether United's existing rates and rate design are appropriate, and additional service quality information necessary to determine whether United's current service quality substantially complies with Commission rules.

If the information necessary to make these determinations cannot be made available to interested parties and the Commission in a timely manner, the Commission may consider at that time whether to pursue extending the period of review for United's AFOR Plan.

B. The Next Phase of This Proceeding

During the next phase of this proceeding, the discovery phase, the commenters will be sending information requests to United to establish the record for the Commission's decision on the merits of the Company's proposed alternative regulation plan. In a separate Order (PROTECTIVE ORDER) issued contemporaneously with this Order, the Commission establishes the guidelines and procedures which will guide the exchange of confidential information during the discovery phase of this proceeding.

ORDER

1. United Telephone Company's (United's) AFOR filing is accepted as substantially complete.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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